MOORE ET AL. v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

No. 442. Argued October 13, 1970—Decided April 20, 1971

Since both parties in this action challenging a school desegregation plan seek the same result, *viz.*, a holding that North Carolina's Anti-Busing Law is constitutional, there is no Art. III case or controversy. Additionally, on the facts of this case, no direct appeal to this Court lies under 28 U. S. C. § 1253.

312 F. Supp. 503, appeal dismissed for lack of jurisdiction.

Whiteford S. Blakeney argued the cause for appellants. With him on the brief was *William H. Booe.*

William J. Waggoner argued the cause for appellees. With him on the brief was *Benjamin S. Horack.*

Solicitor General Griswold and *Assistant Attorney General Leonard* filed a brief for the United States as *amicus curiae.*

PER CURIAM.

Appellants seek review of the decision of the United States District Court for the Western District of North Carolina declaring a portion of the North Carolina anti-busing statute unconstitutional, and enjoining its enforcement. It is a companion case to No. 498, *North Carolina State Board of Education* v. *Swann, ante,* p. 43. We postponed decision on the question of jurisdiction, 400 U. S. 803 (1970), and after hearing on the merits we now dismiss the appeal for lack of jurisdiction.

At the hearing both parties argued to the three-judge court that the anti-busing law was constitutional and urged that the order of the District Court adopting the Finger plan should be set aside. We are thus confronted

with the anomaly that both litigants desire precisely the same result, namely a holding that the anti-busing statute is constitutional. There is, therefore, no case or controversy within the meaning of Art. III of the Constitution. *Muskrat* v. *United States*, 219 U. S. 346 (1911). Additionally, since neither party sought an injunction to restrain a state officer from enforcing a state statute alleged to be unconstitutional; 28 U. S. C. § 2281, this is not an appeal from "any civil action, suit or proceeding required . . . to be heard . . . by a district court of three judges," 28 U. S. C. § 1253, and hence no direct appeal to this Court is available.

Dismissed.